IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8394 OF 2005.

Dattatray Vithal Pandit
since deceased through his LRs
Sulekha Dattatray Pandit & ors. : Petitioners

versus

Ramu Akoba Hanchnale
since deceased through LRs.
Bandu Akoba Hanchale & ors. : Respondents.

Ms.Shubhangi Borde h/f Ms.Seema Sarnaik for the petitioners.

Mr.M.V.Limaye for Respondent Nos.2-a & 2-b.

Mr.C.R.Sonawane, AGP, for Respondent Nos.4 & 5.

CORAM : B.H.MARLAPALLE &
NARESH H. PATIL, JJ.

DATED : September 05, 2006.

ORAL ORDER

1. Heard the learned counsel for the petitioners and learned counsel for the respondents.

2. Writ Petition No.758 of 1994 was decided by this Court on 6th January 2004 and the deceased petitioner was given liberty to submit a

representation by way of Revision before the Commissioner, Pune Division, Pune, under Section 48 of the Land Acquisition Act, 1894 and this was on the ground that the petitioner was claiming to be in possession of the land which was already acquired under the Maharashtra Resettlement Act, 1976. The petitioner thereafter submitted a Revision which came to be registered as Revision Application No.30 of 2004 and, the Divisional Commissioner at Pune decided the same after hearing the parties concerned by his order dated 13.10.2005. The said revision was rejected and acquisition of land admeasuring 1 Hectare 62 R from Gut No.5 was confirmed. Hence this petition.

3. The notification under Section 11 of the Resettlement Act was issued on 2nd November 1978 for acquisition of lands for the Doodhganga Project and the petitioners' village was in the benefit zone of the said project and consequently the restrictions set out in Section 12 of the said Act came into operation from the said date. The present Respondent Nos.1-a, 1-b and 2-a to 2-c were the tenants and the proceedings for acquisition of land admeasuring 1 hectare and 62

R from Gat No.5 were finalized It appears that before the Award was passed in March 1988, notices were issued to the present petitioners for filing their Say so as to record any objection to the proposed acquisition of land from Gat No.5 by the Land Acquisition Officer and, in spite of the notices, none appeared for the petitioners or their predecessor before the Land Acquisition Officer, on the given dates i.e. on 17.1.1980; 31.8.1983; 4.10.1983; 8.12.1983 and 19.4.1989. Consequently, the Land Acquisition Officer proceeded further and the notification under Section 6 of the Land Acquisition Act came to be issued on 30th June 1986. The possession of the land was taken on 16th February 1993 and the petitioners had taken steps either by filing Writ Petition No.758 of 1994 thereafter. The Divisional Commissioner recorded his findings and came to the conclusion that the acquisition of the land was done as per the Land Acquisition Act and the possession of the land which was taken on 16th February 1993 became final and, therefore, the application under Section 48(1) of the Land Acquisition Act was not maintainable. The order for the distribution of the land was passed on 17th April

1991.

4. However, the application was further considered on merits by the impugned order and it was noted that the total holding of the tenants was 7 hectares and 34 R, including the land admeasuring 5 hectares and 22 R from Gat No.5 which was the tenanted land in possession of the said respondents. If this disputed land was deducted from the total holding, the net holding will remain as 2 hectares and 12 R and, therefore, no acquisition proceedings could be taken out against the tenants' ownership land.

5. On the other hand, as per the record verified as on 28th February 1986 in the form of 8-A extract in respect of Gat No.5, the total holding of the petitioners came to 9 hectares 13.7 R. From the said holding, 90 R land was deducted, the net holding of the petitioners was recorded as 8 hectares and 23.7 R. It was also noted that for the development of village land admeasuring 2 hectares and 40 R from the holding of the petitioner was reserved, but no proceedings were initiated for acquiring the said

land and, therefore, this reserved land of 2 hectares and 40 R could not be deducted from the holding of the petitioner.

6. The Divisional Commissioner also noted that in any case, if the petitioner succeeds against the tenants at any future point of time, it is only the issue of right to receive compensation in respect of the acquired land admeasuring 1 hectare 62 R from Gat No.5 and, the ownership of the said land in favour of the petitioner was not disputed, unless the ownership of the entire land in Gat No.5 goes to the tenants. But that would not affect the acquisition already concluded.

7. The learned counsel for the petitioners tried to submit before us that the total tenanted land from Survey Nos.254, 732, 844 and 250 (part) and admeasuring 1 hectare and 95 R was also required to be deducted and if it is so deducted, there was no possibility of land admeasuring 1 hectare and 62 R to be acquired from the holding of the petitioner. We are not impressed by this submission as the record, prior to the award passed in March 1988, has been verified by the

Land Acquisition Officer. Sufficient opportunity was given to the petitioners to represent their case before the Land Acquisition Officer and they did not submit any legal document so as to defeat the acquisition. The litigation, initiated after the possession was taken over in 1993, is only by way of an afterthought.

8. In these premises, the reasoning given by the Divisional Commissioner, at Pune in the impugned order cannot be termed as perverse or grossly erroneous so as to cause interference in our supervisory powers. Hence the writ petition is rejected summarily. We make it clear that this order of rejecting the petition will not in any way affect the petitioners' right to receive compensation as per law.

9. At this stage, the learned counsel Ms.Shubhangi Borde for the petitioners makes on oral application for stay to this order. As has been noted by the Divisional Commissioner that the subject land is not in possession of the petitioners, right from 1993 and there was no stay granted in this petition earlier, we reject this oral application for stay.

[NARESH H. PATIL, J] [B.H.MARLAPALLE, J.]